

Donaldson and Donald Company, Inc. and Deon Matthews and Danny Massengale and Wilfred Day. Cases 7-CA-28711(2), 7-CA-28711(3), and 7-CA-28711(4)

March 25, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On January 29, 1990, the National Labor Relations Board issued a Decision and Order adopting, in the absence of exceptions, the decision of the administrative law judge ordering Donaldson and Donald Company, Inc., to make whole certain of its unit employees for loss of earnings and other benefits resulting from their discharges in violation of the National Labor Relations Act.

A controversy having arisen over the amount of backpay due discriminatees, on November 15, 1991, the Regional Director for Region 7 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.

By letter dated January 22, 1992, the Regional Attorney advised the Respondent, its trustee in bankruptcy and its attorney, that no answer to the compliance specification had been received and that unless an appropriate answer was filed by February 6, 1992, summary judgment would be sought. The Respondent filed no answer.

On February 24, 1992, the General Counsel filed with the Board a Motion to Transfer the Case to and Continue Back Pay Proceedings Before the Board and for Summary Judgment, with exhibits attached. On February 28, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compli-

ance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

It is well-established that Board proceedings fall within the exception to the automatic stay provision of the Federal Bankruptcy Code for proceedings by a governmental unit to enforce its police or regulatory powers. It is equally well established that the filing of a bankruptcy petition does not deprive the Board of its jurisdiction to resolve unfair labor practices. See, e.g., *Cardinal Services*, 295 NLRB No. 96 fn. 2 (June 30, 1989), and cases cited therein.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent to the discriminatees.

ORDER

The National Labor Relations Board orders that the Respondent, Donaldson and Donald Company, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Name	Total	Wage Priority	Unsecured No Priority
Wilfred Day	\$24,137.60	\$2000	\$22,137.60
Deon Matthews	24,137.60	2000	22,137.60
Danny Massengale	24,137.60	2000	22,137.60